

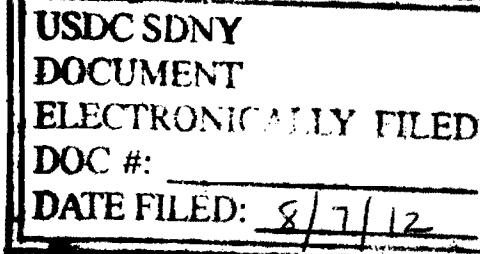
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----x  
MIDSUMMER INVESTMENT, LTD.,

Plaintiff, :

- against - :

NEW DRAGON ASIA CORP., :

Defendant. :



11 Civ. 8190 (TPG)

**OPINION**

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Plaintiff Midsummer Investment, Ltd., brought this action on November 14, 2011, alleging that defendant New Dragon Asia Corp. owes money damages and litigation fees arising from defendant's alleged breach of its obligations to pay dividends and to redeem convertible preferred stock under the terms of a shareholder agreement.

Plaintiff states that defendant owes liquidated damages plus certain litigation fees. The shareholder agreement provides for liquidated damages, including a 7% annual dividend fee, and, in the event of a default, for interest to accrue at an annual rate of 18%. Through August 7, 2012, these amounts total \$559,776.40. The shareholder agreement also provides that the prevailing party shall pay all reasonable costs of enforcing any terms of the agreement. Plaintiff seeks \$642.21 for litigation fees.

Defendant has not responded to the complaint. Plaintiff moves for default judgment.

The court may enter a default judgment when a party against whom affirmative relief is sought has “failed to plead or otherwise defend.” Fed. R. Civ. P. 55. Where defendant was served but failed to answer and the time to do so has expired, plaintiff is entitled to a default judgment. United States v. Wagner, 235 F.Supp. 854, 855-56 (S.D.N.Y. 1964).

Plaintiff served defendant with a copy of the summons and complaint on November 16, 2011, by serving its registered agent in Florida, by hand delivery. On November 15, 2011, pursuant to the terms of the agreement between the parties, plaintiff also served defendant by International Federal Express Mail Priority Overnight mail to defendant’s office in China. Proof of service was filed with the court on December 2, 2011. Defendant has not entered a notice of appearance or filed an answer or otherwise moved with respect to the complaint, and the time to do so has expired. On December 22, 2011, the Clerk of Court issued a Certificate of Default.

Plaintiff’s motion for a default judgment against defendant is granted. Judgment should be entered in the amount of \$560,418.61.

SO ORDERED.

Dated: New York, New York  
August 7, 2012



Thomas P. Griesa

Thomas P. Griesa  
U.S. District Judge